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CABLE SERVICES BUREAU OVERSIGHT

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Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for this opportunity to discuss the activities of the Cable Services Bureau of the Federal Communications Commission.

The Cable Services Bureau serves the public interest by promoting competition in the multichannel video programming market and markets for related telecommunications services. Competition means consumer access to the most desirable services at reasonable rates. A fundamental objective of the Telecommunications Act of 1996 is to achieve these consumer goals by moving the cable industry from a regulated, monopolistic environment to an unregulated, competitive environment. The Commission's policies and regulations advance these goals and foster new entrants by reducing barriers to entry and by promoting fair competition. Where markets are not yet competitive, we implement and enforce regulations aimed at protecting consumers from unreasonable rates. The Bureau works to secure the services offered by the multichannel video industry for as many Americans as possible.

Indeed, as explained more fully below, the Cable Services Bureau plays a critical role in advancing competition in the video industry by, for example, ensuring access to video programming by competitors of incumbent cable operators. It also plays an important role in advancing telecommunications competition by, for example, ensuring access by new telecommunications providers to utility poles and infrastructure on reasonable terms.

THE CABLE SERVICES BUREAU TODAY

With the sunset of rate regulation on the upper tier mandated by the 1996 Telecommunications Act, we have made deliberate efforts to reallocate resources within the Commission and the Bureau. The Bureau today consists of 119 attorneys, economists, accountants, analysts, engineers, and support personnel, down from 240 in 1994. The dedicated Bureau staff has confronted the challenge of this 50% reduction in personnel by ensuring that efficiency and quality of service have not suffered. We will continue to use our resources to facilitate competition in the cable industry and enhance service to consumers in all Bureau endeavors.

The Bureau's attorneys are responsible principally for the preparation of rulemakings and orders, and for enforcement of our rules in such areas as program access, antenna placement, effective competition, inside wiring, navigation devices, local rate appeals, open video system applications, pole attachment proceedings, closed captioning, and broadcast carriage. The attorneys also work with the analysts in preparation of orders in response to rate complaints. The economists and statisticians prepare the annual *Competition Report* and *Cable Price Survey*. The *Competition Report* includes an analysis of the conduct, structure, and performance of the cable industry on a year-to-year basis. The *Price Survey* involves the gathering and analysis of data on the cost of cable programming services and associated equipment. With this data, the economists identify trends in prices charged by cable operators facing competition and those not subject to

competition. The economists also provide economic analysis for cases assigned to Bureau attorneys on issues such as predatory pricing, price discrimination, and exclusivity.

The Bureau's engineers ensure that cable operators comply with safety standards designed to protect aeronautical frequencies and other public safety frequencies from interference caused by cable television signal leakage. They process numerous cable operator filings that are integral to the Bureau's enforcement of safety standards. In 1997, these filings totaled 33,000 basic signal leakage criteria (CLI) reports (used to ascertain the probability of signal interference with aircraft), 1500 aeronautical frequency notifications (used to determine whether frequency interference in an area is caused by a cable signal), 850 cable television relay service (CARS) licenses (authorization for microwave transmissions of cable signals), 400 cable registration statements (used to create individual records for cable operators serving new franchise areas), and 8500 cable registration record changes (used to update records to reflect changed information). During the past 12 months, the Commission has cited several cable systems for signal leakage and microwave infractions.

The Commission has defined its role in the Year 2000 matter as one of advocacy and outreach. The Bureau has contacted industry trade associations, cable operators, and equipment manufacturers and distributors to determine the degree of industry preparedness. The Commission will post the information gathered on its internet site and will disseminate it by other means to permit all interested parties to benefit. The Bureau is participating in industry meetings and workshops convened to address this important issue.

STATE OF THE INDUSTRY

In the Commission's annual *Competition Report* and *Price Survey*, issued on January 13, 1998 and December 15, 1997 respectively, we found that cable continues to dominate the multichannel video programming marketplace. Its national share of subscribers in 1997 was 87%, a decline from 96% in 1992, but still a significant portion of the market. At the same time, cable operators have added 9 million new subscribers to their systems, for a total of 64.2 million in 1997. Cable systems pass 97% of all television households. The most significant competition to cable has come from direct broadcast satellite (DBS) providers that now serve 9 million homes (source: SBCA, *Cableday*, 5/21/98). In addition, several new wireless and wireline providers, such as local exchange carriers, have begun to challenge incumbent cable operators.

Where there is competition, consumers benefit with new services and products, better customer service, and lower prices. For example, as our *1997 Price Survey* indicates, cable systems that face head-to-head competition charged an average rate of \$25.62 while cable systems not subject to such competition charged an average rate of \$28.83. Consumers who did not have choice among video providers paid an average of 12.5% more than those who could choose among providers. The average number of channels offered subscribers was approximately the same for the competitive and non-competitive systems -- 47.3 channels versus 49.4 channels.

Overall, however, cable rates have jumped significantly during the past two years. The *1997 Price Survey* showed that cable rates increased by 8.8% between July 1995 and 1996 and by 8.5% between July 1996 and 1997, significantly more than the increases in the CPI for those same years. In the last twelve months (April 1997 to April 1998), cable rates rose 7.6%, compared to a 1.4% growth in the CPI.

In their responses to the *1997 Price Survey*, cable operators attributed approximately 30% of their rate increases to higher programming costs and a similar amount to inflation. Most of the remaining increases were attributed to channel additions and costs related to upgrades and introduction of new equipment. Commission rules permit rate increases for inflation costs, higher programming costs, and higher equipment costs.

The Bureau is currently seeking more information on the sources of the cable rate increases identified in the *1997 Price Survey*. We recently distributed a voluntary inquiry to the six largest cable companies to learn why programming costs have risen and to learn more about revenues from advertising, commissions, and launch fees that cable operators earn from sources other than subscriber rates. The results of the inquiry will lend insight into the increases that cable operators have taken over the past two years.

RATE REGULATION

Pursuant to the 1992 Cable Act and the 1996 Telecommunications Act, the Bureau regulates the rates of the non-basic, upper tier of cable services. Local governments, or franchising authorities, regulate the basic tier. The basic tier generally consists of the local network stations plus the public, educational, and governmental access stations. The upper tier, called the cable programming services tier, or CPST, consists of other cable channels, but not pay-per-view or premium networks. The Commission's regulations apply to both the basic and cable programming services tiers. Small cable systems and systems facing effective competition are not subject to our rate rules.

Since 1992, the Bureau has received more than 17,000 complaints on cable programming services rates. Despite the volume of complaints and the challenge of examining many cable operators' rate justifications, less than 7% of the total number of complaints remain to be resolved. The Bureau has never missed the 90-day statutory deadline for resolving complaints filed pursuant to the 1996 Act. We have worked to provide cable operators with a full and fair opportunity to justify their rates within the statutory time frame while ensuring that subscribers pay only a reasonable rate.

The Bureau has reviewed the rates of more than 58 million subscribers nationwide and issued almost 1,800 rate orders. Through individual rate adjudications, rate resolutions, and "social contracts", we have ordered operators to refund more than \$84 million dollars to subscribers.

Beyond handling these complaints and advising on the appeals that sometimes follow, the Bureau's rate complaint staff provides support to local franchise authorities as they regulate the basic service tier. When requested, we will perform this review on behalf of the local franchise authority, or we will provide technical assistance to those local franchise authorities seeking our help. Where the local franchise authority regulates rates, operators frequently exercise their right to appeal the local decision to the Commission. The Bureau's review of such appeals will continue beyond the scheduled sunset of CPST rates since the basic service tier rates will remain subject to regulation.

In addition to the normal process for resolving rate issues, the Commission has entered into social contracts and rate resolutions. Together, social contracts and rate resolutions have affected more than 26 million cable subscribers and, when pending rate resolutions are finalized, will have resolved more than 6400 rate complaints. Social contracts and rate resolutions have produced \$55.6 million of the \$84 million in total refunds that the Commission has ordered since the inception of rate regulation.

Further, the Bureau has issued orders finding effective competition in response to petitions filed by video providers. A finding of effective competition means that the petitioning cable operator is no longer subject to our rate regulations. Effective competition has direct benefits for subscribers to the incumbent cable operator. Where there is head-to-head competition, incumbent cable operators forego rate increases, add new programming, and expand customer service.

ACCESS AND OPEN MARKETS

Coincident with our commitment to enforce rate regulation is our commitment to promote competition in the multichannel video programming industry. Pursuant to the 1992 and 1996 Acts, we have adopted significant rulemakings to reduce barriers to entry, promote competition, and increase consumer choice. Access to programming, the unrestricted use of antennas, and procedures for the transfer of inside wiring, for example, are all directed at promoting competition. In addition to administering must-carry and leased access regulations, we have issued hundreds of non-rate related enforcement orders that protect consumers and promote an increasingly competitive environment.

Program Access

Congress recognized in the 1992 Cable Act that potential competitors to incumbent cable operators often face hurdles when attempting to obtain the programming and channels needed to provide a viable and competitive alternative to cable. The Commission's program access rules prohibit unfair and discriminatory practices in the sale of satellite cable and satellite broadcast

programming and prohibit or limit the types of exclusive programming contracts that may be entered into between cable operators and vertically-integrated programming vendors. In accordance with the 1996 Act, the program access rules have been extended to apply to common carriers or their affiliates that provide programming, as well as to open video system operators.

The program access rules provide an important means of enabling the Cable Services Bureau to promote competition in the multichannel video programming distribution marketplace. Indeed, they have been credited as an important factor in the development of both the direct broadcast satellite and wireless cable industries.

The Commission has resolved disputes over exclusivity petitions and complaints, unreasonable refusals to sell, and price discrimination complaints. Last December, we commenced a rulemaking proceeding seeking comment on whether to modify the program access rules to impose deadlines for resolving cases, whether to allow a mandatory right of discovery, and whether to allow damages for violations. We expect the Commission to issue a Report and Order on the revised program access rules within the next several months.

Antennas and Satellite Dishes

In Section 207 of the 1996 Act, Congress directed the Commission to prohibit most restrictions on the location of small satellite dishes, wireless cable antennas and traditional television antennas that consumers use to receive video programming. Congress and the Commission recognized that restrictions imposed by local governments and homeowner associations on the placement of these devices limited consumers' ability to choose alternative video programming providers. Even when consumers could install devices, zoning and permitting procedures often produced unreasonably and artificially high installation costs.

In August 1996, we removed these restrictions by adopting the Over-the-Air Reception Devices Rule. The Rule makes exceptions for bona fide safety restrictions as well as for restrictions necessary to protect historic properties.

In the 20 months that we have enforced the Rule, we have seen a significant impact on viewer choice and competition. There has been a phenomenal level of interest from consumers, industry, local governments, and community associations, including more than 8,000 inquiries. Most callers (and e-mailers) are individuals who have been told by their associations that they cannot have a dish or antenna.

To date, we have received more than 50 petitions for declaratory ruling, most from individuals who wish to install an antenna. Even after a petition is filed, we continue to try to resolve the dispute quickly and informally. Of these petitions, we have informally resolved approximately half, and nine have gone through the formal process. We are currently working on resolutions of the remaining complaints.

We believe this Rule is working to promote competition. Viewers can now select satellite retailers and wireless cable distributors that compete with cable on the basis of which video

provider offers the best service and most appealing programming at the most reasonable price.

Mandatory Carriage of Local Signals / Areas of Dominant Influence

Pursuant to Section 614 of the Communications Act and rules adopted by the Commission, a commercial television broadcast station may assert mandatory carriage rights for cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization. An ADI is a geographic market designation that defines each television market exclusive of others and based on measured viewing patterns. Each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. A noncommercial station's must-carry rights are based on its distance from cable systems' principal headends.

The 1992 and 1996 Acts mandate that the Commission resolve all ADI modification proceedings and initial must-carry disputes within 120 days of filing. ADI modification proceedings involve petitions to expand or contract the market of a relevant television station. Resolution of carriage disputes ensures that the 60 percent of the American public who view broadcast television programming over cable have access to their local stations. Resolution of these cases also guarantees that cable operators cannot prevent less popular local stations from reaching their audiences, thereby increasing subscribers' choices and enhancing competition between local stations.

Because of this time limit and the difficult factual and legal issues often presented, the Bureau devotes significant resources to meet this responsibility. To date, we have processed more than 750 cases.

Inside Wiring

As part of its effort to promote competition, and recognizing that access to wiring means access to subscribers, the Commission established procedures for the disposition of the wiring that is inside multiple dwelling units (MDUs), but outside individual residences, when a subscriber or provider terminates service. The Commission's rules permit competing video providers to gain access to existing wiring in an MDU so that the wiring does not have to be re-installed each time a competing provider wants to serve an MDU resident after service by the incumbent provider has been terminated. Where the incumbent video provider no longer has a legally enforceable right to remain in the building, the video provider must choose to sell, remove, or abandon its wiring. These rules cover circumstances where the MDU owner seeks a new provider for the entire building or where the MDU owner permits two or more providers to compete for subscribers on a unit-by-unit basis, and they apply to all video providers. Currently, the Commission is considering whether our rules should provide equal access to MDUs for all service providers. An order addressing this and related issues will be considered by the Commission in the coming months.

Commercial Availability of Navigation Devices

In the 1996 Act, Congress required the Commission to adopt regulations to ensure that "navigation devices" are commercially available without jeopardizing the security of the services offered. Navigation devices are converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services.

While direct broadcast satellite ("DBS") subscribers generally purchase customer premises equipment in retail outlets, cable subscribers must usually lease their equipment from their cable operator. This precludes the development of an open market for such equipment.

In February 1997, the Commission initiated a rulemaking to implement Congress' mandate. The rules will begin the process of opening the marketplace for customer premises equipment, thereby stimulating competition and choice. They will stimulate value-added innovation similar to what took place when telephone consumers were allowed to purchase their own phones and other equipment. At the same time, the rules must address complex security issues that were not present in the telephone model. The Commission will address this issue shortly.

Cable Horizontal Ownership Limits and Attribution Rules

The 1992 Cable Act added Section 613 to the Communications Act, which required the Commission to establish limits on the number of cable subscribers that any one cable system can reach through its own network or through a network in which it has an attributable interest. Pursuant to this provision, the Commission adopted horizontal ownership rules in 1993, providing that "no person or entity shall be permitted to reach more than 30% of all homes passed nationwide through cable systems owned by such person or entity or in which such person or entity holds an attributable interest." The Commission is currently reconsidering these rules. The Commission is also considering possible changes to the cable ownership attribution rules, which define a "cognizable interest" in cable television services. These interests will be included in the calculation of horizontal ownership rules.

Cross-Ownership Rules

The Communications Act and the Commission's rules prohibit certain combinations of competing video programming distributors. The Commission's cross-ownership rules prohibit the ownership of television stations and cable systems serving the same market place. The rules also prohibit, in certain circumstances, the ownership by a cable operator of a satellite master antenna system (SMATV) serving a multi-unit dwelling in a cable operator's franchise area. There are also restrictions on the ownership of cable systems and terrestrial multi-channel distribution systems (MMDS) serving the same market place. In addition to its enforcement of such restrictions, the Bureau considers waiver petitions in which parties allege that their particular combinations will not evade the underlying purpose of the rules. In addressing these petitions, the Bureau seeks to promote competition and at the same time to insure that our cross-

ownership rules do not inhibit competition in their application.

Pole Attachments

Congress enacted Section 224 of the Communications Act to ensure that utilities' control over their infrastructure (poles, ducts, conduits and rights-of-way) would not create a bottleneck that stifled the growth of cable television. The 1996 Act expanded the scope of Section 224 to support access by telecommunications providers as well. Access to utility infrastructure at just and reasonable rates is critical to the development of competition in the telecommunications and video markets. Without reasonable access, electric, phone and other utility infrastructure owners could effectively prohibit the entry of new providers to the market and stifle current providers in the delivery of new services. Section 224, and the Commission's implementation of the statutory provision, are therefore fundamental to the emergence of a competitive environment as they ensure access, particularly by new entrants. Section 224 also provides for increased compensation for utilities, so that they are appropriately compensated for this expanded use of their facilities.

The Bureau is responsible for pole attachment rulemakings and enforcement and adjudicates complaints relating to access and to the rates, terms, or conditions of pole attachment agreements. This work benefits wireless and wireline telecommunications providers, pursuant to Section 703 of the 1996 Act, as well as data services companies and providers of video. The Commission issued rules in February that implemented the new telecommunications provisions and established a rate for telecommunications carriers making attachments to a pole or within a duct, conduit or right-of-way. The staff is currently reviewing the Commission's pole attachment rules as they apply to cable operators (and to telecommunications providers until the effective date of the new rules in 2001).

Private negotiations have been the primary means for making pole attachment agreements, and we want them to remain the most efficient and effective method for achieving results. Recognizing, however, that negotiations between pole owners and those seeking attachments are not always successful, it is necessary that the Commission's rules provide clear and comprehensive direction in the event of a dispute.

Mandatory Carriage of Digital Television Signals

In March 1997, the Supreme Court upheld the Communications Act's mandatory analog broadcast signal carriage provisions. Pursuant to Section 614(b)(4)(B) of the 1992 Act, the

Commission is now considering requirements for the carriage of digital television signals on cable systems, and will soon initiate a rulemaking to address this issue.

The most difficult issues relate to managing the transition, especially during the early period in which video channel capacity remains limited and the base of consumers with digital television receivers is small. The resolution of these problems will affect the entire digital conversion process and the efforts of the Commission to recover the spectrum space that is now used for

analog broadcasting. The Bureau is working with the Mass Media Bureau on these issues.

Leased Access

Section 612 of the Communications Act establishes a framework so that parties unaffiliated with cable operators can gain access to operators' program distribution system. This "commercial leased access" requirement promotes competition in the delivery of video programming. Commission rules establish maximum reasonable rates and require the operators to establish reasonable terms and conditions for leased access. Channel set-aside requirements are imposed in proportion to a system's total activated channel capacity. The Bureau has released numerous orders ruling on the reasonableness of cable operators' leased access terms.

COMMUNITY

The Bureau has produced significant and beneficial rules that directly serve and protect the interests of consumers. These include a leadership role in developing the newly approved television ratings system, adopting standards and a timetable for implementing the so-called "V-Chip" technology, and issuing rules for the closed captioning of programming.

TV Ratings and the "V-Chip"

This past March, the Commission accepted the voluntary program ratings submitted by distributors of video programming, pursuant to Section 551 of the 1996 Act. The Commission determined that the proposed ratings system met the goals of Congress in enacting the statute. It found that the ratings proposal would provide parents "with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children." In addition, the Commission, pursuant to recommendations from its Office of Engineering and Technology, implemented technical requirements for the "V-chip" for use in conjunction with the ratings.

Children's programs fall into two ratings categories: one that designates programs appropriate for all children (including ages two to six); and one rated for older children (ages seven and above). Programming for the entire audience is also age-based and supplemented by content indicators for sex, violence, adult language and suggestive dialogue. Rating icons appear for 15 seconds at the beginning of all rated programming. The industry has established an Oversight Monitoring Board, which includes representatives of the industry and the advocacy community, to review the guidelines on a regular basis to ensure that the rating guidelines are applied accurately and consistently.

Closed Captioning of Video Programming

Section 305 of the 1996 Act directs the Commission to adopt rules requiring the captioning of video programming to provide better access to persons with hearing disabilities. The provision furthers Congress' goal of granting all Americans access to video services and programs,

particularly as video programming becomes an increasingly important part of life at home, at school, and in the work place. "Closed captioning" displays the audio portion of a television signal as printed words. To assist viewers with hearing disabilities, closed captioning may also identify speakers, sound effects, music and laughter.

In August 1997, the Commission adopted transition periods for new programming and pre-rule programming, and required that any provider that receives captioned programming must pass it on to consumers with the captions intact, unless editing requires the reformatting of the captions. The Commission, as Congress authorized, also adopted limited exemptions from the rules for situations where closed captioning would impose an economic burden, and provided flexibility to consider unusual cases under the undue burden standard. The transition periods and exemptions were selected to ensure accessibility to captioned programming within a reasonable amount of time, while taking into consideration the availability and cost of captioning resources. The rules also were intended to place maximum reliance on competitive market forces to develop efficient and cost effective methods for high-quality captioning. Petitions for reconsideration of several aspects of the rules, but not the overall regulatory scheme, are pending.

CONCLUSION

The multichannel video industry is continuing to evolve. As new competitors to cable develop, the industry itself will continue to evolve as a competitor to providers of other services, such as local telephone companies. Many issues continue to face the Commission regarding how to foster competitive markets in all the telecommunications industries. Rate regulation has been an important part of the regulatory structure. As rate regulation sunsets, however, our need to promote competition will become even more acute. We will continue to evaluate our rules and regulations to ensure that they achieve the important goals set out by Congress, and that they sufficiently meet these challenges. We will also continue to evaluate the structure and functions of the Bureau to accommodate changes in an increasingly competitive marketplace for multichannel video services.

We take seriously our obligation to the public trust, and that we are accountable for ensuring that our decisions are premised upon fair processes where the range of interests have had an opportunity to participate. We view the Subcommittee's oversight as an important part of this accountability and look forward to your perspectives on how we implement the law. We are sincere in our commitment to improving how we carry out our responsibilities.

Thank you, Mr. Chairman and members of the Subcommittee, for allowing me to appear before you today. I am pleased to answer any questions you may have.